



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/262,402	03/04/99	MODESITT	D 15508-002500

020350 QM12/0329
TOWNSEND AND TOWNSEND AND CREW LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111

EXAMINER

KING, A

ART UNIT

PAPER NUMBER

3731

DATE MAILED:

03/29/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/262,402

Applicant(s)

Andreas et al.

Examiner

Anthony S. King

Group Art Unit

3731

☒ Responsive to communication(s) filed on Mar 4, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire one month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-47 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 1-47 are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Mar 4, 1999 is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3731

DETAILED ACTION

Election/Restriction

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Specie in figures 1-7;

specie in figures 11a-11e.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to

Art Unit: 3731

be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. A telephone call was made to Mr. Barrish on 03/24/2000 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Drawings

4. Figures 10a, 10b, 11a, 11b-11e are not of sufficient quality to permit examination.

Accordingly, new drawings are required in reply to this Office action.

~~Applicant is given a TWO MONTH time period to submit new drawings in compliance with 37 CFR 1.81. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a). Failure to timely submit new drawings will result in ABANDONMENT of the application.~~

Art Unit: 3731

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Andreas et al. (5,613,974), also (6,036,699), disclose device and method for the percutaneous suturing of a vascular tissue. Both references may pose a possible double patenting rejection.

Klein et al. (5,779,719) (5,417,699) disclose similar vacular closure device (see fig. 35) and may be used for future 35 U.S.C. section 102 rejections.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony S. King whose telephone number is (703) 306-5962. The examiner can normally be reached Mon-Fri., 8:00 AM to 5:00 PM Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Buiz, can be reached at (703) 308-0871.

General inquiries relating to the status of this application should be directed to the Group receptionist at (703) 308-0858. The FAX number is (703) 305-3579.



Anthony S. King

Patent Examiner

March 24, 2000



MICHAEL BUIZ
SUPERVISORY PATENT EXAMINER
GROUP 3300

2/26/02